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CRIS A KLINGERMAN State Bar No. 82108 Law Offices ROBERT E. WEISS INCORPORATED 920 Village Oaks Drive Covina, CA 91724 (626) 967-4302

Attorneys for Plaintiff ROBERT E. WEISS INCORPORATED

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

MARIA R. METCALF,

CASE NO.: 08 CV 731 W POR

Plaintiff,

VS.

DREXEL LENDING GROUP, a CA Corp., OLD REPUBLIC TITLE CO. a CA Corp., AURORA LOAN SVCS, LLC, a CA LLC, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware Corporation and ROBERT E. WEISS, INC., a California corporation,

ANSWER OF DEFENDANT ROBERT E. WEISS, INC. TO PLAINTIFF'S **COMPLAINT** 

Defendants.

Defendant Robert E. Weiss Incorporated ("Defendant Weiss, Inc.") answers Plaintiff's Complaint as follows:

- 1. In answer to Paragraph 1 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 2. In answer to Paragraph 2 of the Complaint, Defendant Weiss, Inc. admits that Defendant Weiss, Inc. is a California corporation doing business in San Diego County, California and is without sufficient knowledge or information to form a belief as to the truth of

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the remaining allegations contained in said paragraph, and on that basis denies each and every other allegation contained therein.

- 3. In answer to Paragraph 3 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 4. In answer to Paragraph 4 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- In answer to Paragraph 5 of the Complaint, Defendant Weiss, Inc. denies each 5. and every allegation contained therein.
- In answer to Paragraph 6 of the Complaint, Defendant Weiss, Inc. denies that 6. Defendant Aurora was not the holder in due course of the note and assignee of the deed of trust at foreclosure and, except as admitted, denies each and every other allegation contained therein.
- 7. In answer to Paragraph 7 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 8. In answer to Paragraph 8 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 9. In answer to Paragraph 9 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- In answer to Paragraph 10 of the Complaint, Defendant Weiss, Inc. denies each 10. and every allegation contained therein.
- In answer to Paragraph 11 of the Complaint, Defendant Weiss, Inc. denies each 11. and every allegation contained therein.
- 12. In answer to Paragraph 12 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not deliver to Plaintiff an "acceleration notice statement" and except as admitted denies each and every other allegation contained therein.
- 13. In answer to Paragraph 13 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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- 14. In answer to Paragraph 14 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 15. In answer to Paragraph 15 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 14 hereinabove.
- In answer to Paragraph 16 of the Complaint, Defendant Weiss, Inc. admit that 16. Defendant Weiss, Inc. did not give "mortgage documents" to Plaintiff in conjunction with loan origination and, except as admitted, denies each and every other allegation contained therein.
- 17. In answer to Paragraph 17 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 18. In answer to Paragraph 18 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 19. In answer to Paragraph 19 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 18 hereinabove.
- 20. In answer to Paragraph 20 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 21. In answer to Paragraph 21 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 22. In answer to Paragraph 22 of the Complaint, Defendant Weiss, Inc. admits that Defendant Weiss, Inc. did not provide disclosures under Article IX of the Uniform Commercial Code to Plaintiff and except as admitted denies each and every other allegation contained therein.
- 23. In answer to Paragraph 23 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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- 24. In answer to Paragraph 24 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 25. In answer to Paragraph 25 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 24 hereinabove.
- 26. In answer to Paragraph 26 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 27. In answer to Paragraph 27 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 28. In answer to Paragraph 28 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 29. In answer to Paragraph 29 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 30. In answer to Paragraph 30 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 29 hereinabove.
- 31. In answer to Paragraph 31 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 32. In answer to Paragraph 32 of the Complaint, Defendant Weiss, Inc. admits that Defendant Weiss, Inc. did not provide disclosures at loan origination and, except as admitted, denies each and every other allegation contained therein.
- 33. In answer to Paragraph 33 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- In answer to Paragraph 34 of the Complaint, Defendant Weiss, Inc. denies each 34. and every allegation contained therein.

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35. In answer to Pa	aragraph 35 of the Complaint,	, Defendant We	eiss, Inc. incorporate		
its answers to paragraphs 1 through 34 hereinabove.					

- 36. In answer to Paragraph 36 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 37. In answer to Paragraph 37 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 38. In answer to Paragraph 38 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 39. In answer to Paragraph 39 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 40. In answer to Paragraph 40 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 39 hereinabove.
- 41. In answer to Paragraph 41 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 42. In answer to Paragraph 42 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 43. In answer to Paragraph 43 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 42 hereinabove.
- 44. In answer to Paragraph 44 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 45. In answer to Paragraph 45 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 46. In answer to Paragraph 46 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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47.	In answer to Paragraph 47 of the Complaint, Defendant Weiss, Inc. incorporates
ts answers to	paragraphs 1 through 46 hereinabove.

- 48. In answer to Paragraph 48 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 49. In answer to Paragraph 49 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 50. In answer to Paragraph 50 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 51. In answer to Paragraph 51 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 50 hereinabove.
- 52. In answer to Paragraph 52 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 53. In answer to Paragraph 53 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 54. In answer to Paragraph 54 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 55. In answer to Paragraph 55 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 54 hereinabove.
- 56. In answer to Paragraph 56 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 57. In answer to Paragraph 57 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 58. In answer to Paragraph 58 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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and every allegation contained therein. 66. and every allegation contained therein.

- 59. In answer to Paragraph 59 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 58 hereinabove.
- 60. In answer to Paragraph 60 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 61. In answer to Paragraph 61 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 62. In answer to Paragraph 62 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 63. In answer to Paragraph 63 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 62 hereinabove.
- 64. In answer to Paragraph 64 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. failed to provide disclosures at loan origination and, except as admitted, denies each and every other allegation contained therein.
- 65. In answer to Paragraph 65 of the Complaint, Defendant Weiss, Inc. denies each
- In answer to Paragraph 66 of the Complaint, Defendant Weiss, Inc. denies each
- 67. In answer to Paragraph 67 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 66 hereinabove.
- 68. In answer to Paragraph 68 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not provide an "acceleration statement" to Plaintiff and, except as admitted, denies each and every other allegation contained therein.
- 69. In answer to Paragraph 69 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 70. In answer to Paragraph 70 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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	71.	In answer to	Paragraph 71	of the C	Complaint,	Defendant	Weiss,	Inc.	incorpor	ates
its ans	wers to j	paragraphs 1	through 70 he	reinabo	ve.					

- 72. In answer to Paragraph 72 of the Complaint, Defendant Weiss, Inc. is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 73. In answer to Paragraph 73 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 74. In answer to Paragraph 74 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 75. In answer to Paragraph 75 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 74 hereinabove.
- 76. In answer to Paragraph 76 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not provide to Plaintiff information regarding any "new balance" or any "additional finance charges" and, except as admitted, denies each and every other allegation contained therein.
- 77. In answer to Paragraph 77 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 78. In answer to Paragraph 78 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 79. In answer to Paragraph 79 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 78 hereinabove.
- 80. In answer to Paragraph 80 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not give to Plaintiff copies of the "mortgage" and, except as admitted, denies each and every other allegation contained therein.
- 81. In answer to Paragraph 81 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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- 82. In answer to Paragraph 82 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 83. In answer to Paragraph 83 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 82 hereinabove.
- 84. In answer to Paragraph 84 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not prepare provisions contained in loan origination documents and, except as admitted, deny each and every other allegation contained therein.
- 85. In answer to Paragraph 85 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 86. In answer to Paragraph 86 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 87. In answer to Paragraph 87 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 86 hereinabove.
- 88. In answer to Paragraph 88 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not provide loan disclosures at origination or prepare settlement statements and, except as admitted, denies each and every other allegation contained therein.
- 89. In answer to Paragraph 89 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 90. In answer to Paragraph 90 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 91. In answer to Paragraph 91 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 90 hereinabove.
- 92. In answer to Paragraph 92 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not provide interest disclosures at loan origination and, except as admitted, deny each and every other allegation contained therein.
- 93. In answer to Paragraph 93 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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- 94. In answer to Paragraph 94 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 95. In answer to Paragraph 95 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 94 hereinabove.
- In answer to Paragraph 96 of the Complaint, Defendant Weiss, Inc. admit that 96. Defendant Weiss, Inc. did not disclose information concerning loan origination fees at loan origination and, except as admitted, deny each and every other allegation contained therein.
- 97. In answer to Paragraph 97 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- In answer to Paragraph 98 of the Complaint, Defendant Weiss, Inc. denies each 98. and every allegation contained therein.
- 99. In answer to Paragraph 99 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 98 hereinabove.
- In answer to Paragraph 100 of the Complaint, Defendant Weiss, Inc. admit that 100. Defendant Weiss, Inc. did not provide any rights of rescission at loan origination and, except as admitted, denies each and every other allegation contained therein.
- 101. In answer to Paragraph 101 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- In answer to Paragraph 102 of the Complaint, Defendant Weiss, Inc. denies each 102. and every allegation contained therein.
- In answer to Paragraph 103 of the Complaint, Defendant Weiss, Inc. incorporates 103. its answers to paragraphs 1 through 102 hereinabove.
- 104. In answer to Paragraph 104 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. was not involved in disclosures at loan origination and, except as admitted, deny each and every other allegation contained therein.
- 105. In answer to Paragraph 105 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

- 106. In answer to Paragraph 106 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 107. In answer to Paragraph 107 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 106 hereinabove.
- 108. In answer to Paragraph 108 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. provided notice of default and notice of sale under California Civil Code Section 2924 et seg. and notice under the Fair Debt Collection Practices Act and, except as admitted, denies each and every other allegation contained therein.
- 109. In answer to Paragraph 109 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 110. In answer to Paragraph 110 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- 111. In answer to Paragraph 111 of the Complaint, Defendant Weiss, Inc. incorporates its answers to paragraphs 1 through 110 hereinabove.
- 112. In answer to Paragraph 112 of the Complaint, Defendant Weiss, Inc. admit that Defendant Weiss, Inc. did not provide interest rate disclosures at loan origination and, except as admitted, denies each and every other allegation contained therein.
- 113. In answer to Paragraph 113 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.
- In answer to Paragraph 114 of the Complaint, Defendant Weiss, Inc. denies each 114. and every allegation contained therein.
- In answer to Paragraph 115 of the Complaint, Defendant Weiss, Inc. incorporates 115. its answers to paragraphs 1 through 114 hereinabove.
- In answer to Paragraph 116 of the Complaint, Defendant Weiss, Inc. denies each 116. and every allegation contained therein.
- In answer to Paragraph 117 of the Complaint, Defendant Weiss, Inc. denies each and every allegation contained therein.

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# FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. The Complaint, and each and every cause of action or purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action against Answering Defendants.

#### SECOND AFFIRMATIVE DEFENSE

(Non-Monetary Status)

2. Defendant Weiss, Inc. maintains a reasonable belief that Defendant Weiss, Inc. has been named in the action or proceeding solely in its capacity as trustee under the deed of trust foreclosed, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee.

### THIRD AFFIRMATIVE DEFENSE

(Statutory Compliance)

3. Defendant Weiss, Inc., as substituted trustee, has performed each and every act required to be performed by it in accordance with California Civil Code Section 2924 et seq., and applicable provisions of the Fair Debt Collection Practices Act, to foreclose Plaintiff's interest in the real property commonly known as 954 Surrey Drive, Chula Vista, California.

### FOURTH AFFIRMATIVE DEFENSE

(Tender)

4. Defendant Weiss, Inc. is informed and believes and thereon alleges that Plaintiff was in default of sums due to Defendant Aurora Loan Services, LLC prior to and at the time of foreclosure and that Plaintiff failed to tender either the amount necessary to reinstate the amount due to Defendant Aurora Loan Services, LLC or to pay off said sum prior to foreclosure.

## FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

5. Defendant Weiss, Inc. is informed and believes and thereon alleges that Plaintiff was in default of sums due to Defendant Aurora Loan Services, LLC prior to and at the time of foreclosure and that Plaintiff failed to tender either the amount necessary to reinstate the amount

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due to Defendant Aurora Loan Services, LLC or to pay off said sum prior to foreclosure and is therefore estopped to claim the relief demanded in Plaintiff's Complaint.

## SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

6. Defendant Weiss, Inc. is informed and believes and thereon alleges that Plaintiff originated a \$900,000.00 loan in approximately February 2007 secured by the deed of trust later foreclosed and at the time of loan origination failed to provide to the mortgage lender true and correct information concerning Plaintiff's financial status and ability to repay the loan and, as a result thereof, Plaintiff has unclean hands and is equitably and otherwise precluded from seeking damages or other relief as alleged in Plaintiff's Complaint.

Dated: May 9, 2008

ROBERT E. WEISS INCORPORATED

BY:

CRIS A KLINGERMAN Attorney for Defendant

ROBERT E. WEISS INCORPORATED

#### PROOF OF SERVICE BY MAIL (C.C.P. 1013a, 2015.5)

STATE OF CALIFORNIA

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COUNTY OF LOS ANGELES

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ROBERT E. WEISS INCORPORATED

920 VILLAGE OAKS DRIVE COVINA, CA 91724 THI FIDHONF (626) 667-4302 - FAY (626) I, Dawn Gentry, declare as follows:

I am a resident of Los Angeles County, I am over the age of eighteen years and am not a party to the within entitled action; my business address is 920 Village Oaks Drive, Covina, California.

On May 9, 2008, I serve the following:

ANSWER OF DEFENDANT ROBERT E. WEISS, INC. TO PLAINTIFF'S COMPLAINT

on the interested parties in said action by first class mail, postage prepaid, addressed as follows:

Maria R. Metcalf, Pro Se 954 Surrey Dr. Bonita, CA 91902

I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Covina, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing affidavit/declaration.

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2008, at Covina, California.

DAWN GENTRY